

## COMMITTEE REPORT

### MR. PRESIDENT:

The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 491, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1       Page 1, line 4, delete "Indiana wetlands mitigation".
- 2       Page 1, line 8, delete "'Class I wetland", for" and insert "**For**
- 3       **purposes of IC 13-18:**
- 4       **(1) "Class I wetland" means an isolated wetland described by**
- 5       **one (1) or both of the following:**
- 6       **(A) At least fifty percent (50%) of the wetland has been**
- 7       **substantially disturbed or affected by human activity or**
- 8       **development by one (1) or more of the following:**
- 9       **(i) Removal or replacement of the natural vegetation.**
- 10       **(ii) Disturbance or modification of the natural**
- 11       **hydrology.**
- 12       **(B) The wetland supports minimal wildlife habitat or**
- 13       **hydrologic function because the wetland:**
- 14       **(i) does not provide critical habitat for threatened or**
- 15       **endangered species listed in accordance with the**
- 16       **Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);**
- 17       **(ii) is typified by low species diversity;**
- 18       **(iii) contains greater than fifty percent (50%) aerial**
- 19       **coverage of non-native invasive species;**
- 20       **(iv) does not support significant habitat or wildlife uses;**

- 1                   **or**
- 2                   **(v) does not possess significant hydrologic function;**
- 3           **(2) "Class II wetland" means:**
- 4                   **(A) an isolated wetland that is not a Class I or Class III**
- 5                   **wetland; or**
- 6                   **(B) a type of wetland listed in subdivision (3)(B) that would**
- 7                   **meet the definition of Class I wetland if the wetland were**
- 8                   **not a rare or ecologically important type; and**
- 9           **(3) "Class III wetland" means an isolated wetland:**
- 10                   **(A) that is located in a setting undisturbed or minimally**
- 11                   **disturbed by human activity or development; or**
- 12                   **(B) unless classified as a Class II wetland under**
- 13                   **subdivision (2)(B), that is of one (1) of the following rare**
- 14                   **and ecologically important types:**
- 15                   **(i) Acid bog.**
- 16                   **(ii) Acid seep.**
- 17                   **(iii) Circumneutral bog.**
- 18                   **(iv) Circumneutral seep.**
- 19                   **(v) Cypress swamp.**
- 20                   **(vi) Dune and swale.**
- 21                   **(vii) Fen.**
- 22                   **(viii) Forested fen.**
- 23                   **(ix) Forested swamp.**
- 24                   **(x) Marl beach.**
- 25                   **(xi) Muck flat.**
- 26                   **(xii) Panne.**
- 27                   **(xiii) Sand flat.**
- 28                   **(xiv) Sedge meadow.**
- 29                   **(xv) Shrub swamp.**
- 30                   **(xvi) Sinkhole pond.**
- 31                   **(xvii) Sinkhole swamp.**
- 32                   **(xviii) Wet floodplain forest.**
- 33                   **(xix) Wet prairie.**
- 34                   **(xx) Wet sand prairie."**

35           Page 1, delete lines 9 through 17.

36           Page 2, delete lines 1 through 36.

37           Page 3, line 6, after "restoration;" insert "**or**".

38           Page 3, delete lines 8 through 9.

1 Page 3, line 11, after "materials." insert "**Wetlands enlargement,**  
 2 **enhancement, and preservation may be considered compensatory**  
 3 **mitigation on a case-by-case basis, particularly for Class III**  
 4 **wetlands.**".

5 Page 3, between lines 11 and 12, begin a new paragraph and insert:  
 6 "SECTION 5. IC 13-11-2-36.4 IS ADDED TO THE INDIANA  
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 8 [EFFECTIVE UPON PASSAGE]: **Sec. 36.4. "Compensatory**  
 9 **mitigation credit" or "credit", for purposes of IC 13-18, means a**  
 10 **credit measured in units of acres representing an area of wetlands**  
 11 **that has been approved for compensatory mitigation purposes.**".

12 Page 3, line 15, delete "navigable waters" and insert "**subject to**  
 13 **regulation**".

14 Page 3, line 19, after "Exempt" insert "**isolated**".

15 Page 3, line 21, delete "volitional" and insert "**voluntarily created**".

16 Page 3, line 36, delete "a spontaneous" and insert "**an incidental**".

17 Page 3, line 42, after "ditch;" insert "**or**".

18 Page 4, line 1, delete "or".

19 Page 4, delete line 2.

20 Page 4, line 11, after "(5)" insert "**subject to subsection (b),**".

21 Page 4, line 11, delete "one (1)" and insert "**one-fourth (1/4)**".

22 Page 4, line 13, after "(6)" insert "**subject to subsection (c),**".

23 Page 4, line 13, delete "one-quarter" and insert "**one-tenth (1/10)**".

24 Page 4, line 14, delete "(1/4)".

25 Page 4, line 15, delete "farmland" and insert "**land:**

26 **(A)**".

27 Page 4, line 15, delete "by" and insert "**under**".

28 Page 4, line 16, delete "National Resources Conservation Service of  
 29 the".

30 Page 4, line 17, delete "Agriculture;" and insert:

31 "**Agriculture wetland conservation rules, also known as**  
 32 **Swampbuster, because of voluntary enrollment in a federal**  
 33 **farm program; and**

34 **(B) used for agricultural or associated purposes allowed**  
 35 **under the rules referred to in clause (A);**".

36 Page 4, delete lines 19 through 22, begin a new paragraph and  
 37 insert:

38 "**(b) A Class I wetland is an exempt isolated wetland under**

- 1 subsection (a)(5) only to the extent that the sum of:
- 2 (1) the acreage of the isolated wetland; and
- 3 (2) the combined acreage on the tract of all other exempt
- 4 isolated wetlands under subsection (a)(5);
- 5 does not exceed one-half (1/2) acre.
- 6 (c) A Class II wetland is an exempt isolated wetland under
- 7 subsection (a)(6) only to the extent that the sum of:
- 8 (1) the acreage of the isolated wetland; and
- 9 (2) the combined acreage on the tract of all other exempt
- 10 isolated wetlands under subsection (a)(6);
- 11 does not exceed one-fifth (1/5) acre."
- 12 Page 4, delete lines 23 through 28.
- 13 Page 4, line 32, delete "navigable waters" and insert "**subject to**
- 14 **regulation**".
- 15 Page 4, line 39, delete "or manmade body of".
- 16 Page 4, line 40, delete "a lake subject to IC 14-26-5;" and insert "**ten**
- 17 **(10) acres;**".
- 18 Page 5, line 13, after "exempt" insert "**isolated**".
- 19 Page 5, between lines 13 and 14, begin a new paragraph and insert:
- 20 "SECTION 11. IC 13-11-2-233.5 IS ADDED TO THE INDIANA
- 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 22 [EFFECTIVE UPON PASSAGE]: **Sec. 233.5. "Tract", for purposes**
- 23 **of this chapter, means any area of land that is under common**
- 24 **ownership and is contained within a continuous border.**".
- 25 Page 5, line 16, delete "Volitional" and insert "**Voluntarily**
- 26 **created**".
- 27 Page 5, delete lines 18 through 20.
- 28 Page 5, line 21, delete "(2)" and insert "**(1)**".
- 29 Page 5, line 21, delete "restored, created, or expanded" and insert
- 30 "**restored or created**".
- 31 Page 5, line 23, delete "restoration, creation, or enlargement" and
- 32 insert "**restoration or creation**".
- 33 Page 5, line 25, delete "(3)" and insert "**(2)**".
- 34 Page 5, line 40, after "exempt" insert "**isolated**".
- 35 Page 6, between lines 3 and 4, begin a new paragraph and insert:
- 36 "SECTION 14. IC 13-11-2-265.6 IS ADDED TO THE INDIANA
- 37 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 38 [EFFECTIVE UPON PASSAGE]: **Sec. 265.6. "Wetland activity", for**

- 1 **purposes of IC 13-18-22 and IC 13-18-13, means the:**
- 2 **(1) filling;**
- 3 **(2) dredging; or**
- 4 **(3) excavating;**
- 5 **of an isolated wetland."**
- 6 Page 6, line 4, delete "IC 13-11-2-265.6" and insert "IC
- 7 13-11-2-265.7".
- 8 Page 6, line 6, delete "265.6" and insert "**265.7**".
- 9 Page 6, delete lines 25 through 39.
- 10 Page 7, line 20, after "under" insert "**IC 13-18-22-2 or**".
- 11 Page 7, line 27, delete "discharge of fill material into" and insert
- 12 "**wetland activity in**".
- 13 Page 7, line 29, delete "under this chapter".
- 14 Page 7, line 29, delete "a discharge" and insert "**the following**
- 15 **wetland activities:**".
- 16 Page 7, delete line 30.
- 17 Page 7, line 31, after "(1)" insert "**The discharge of**".
- 18 Page 7, line 32, delete "in a de minimis amount" and insert "**in:**
- 19 **(A) an amount less than twenty (20) cubic yards; or**
- 20 **(B) an area less than one-tenth (1/10) acre in a single state**
- 21 **regulated wetland."**
- 22 Page 7, line 33, delete "fill material resulting from any" and insert
- 23 "**A wetland**".
- 24 Page 7, line 33, after "activity" insert "**at a surface coal mine**".
- 25 Page 7, line 33, delete "a".
- 26 Page 7, line 34, delete "department or agency of this state other
- 27 than".
- 28 Page 7, line 34, after "the department" insert "**of natural**
- 29 **resources**".
- 30 Page 7, line 35, delete "approved, under authority other than this
- 31 chapter," and insert "**approved**".
- 32 Page 7, line 41, delete "practicable; or" and insert "**practicable**".
- 33 Page 7, line 42, delete "fill material resulting from any" and insert
- 34 "**Any**".
- 35 Page 7, line 42, delete "of a type or nature".
- 36 Page 8, delete line 1.
- 37 Page 8, line 2, delete "requirements" and insert "**listed**".
- 38 Page 8, line 2, delete "Act if" and insert "**Act, including:**

(A) normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the navigable waters; and

(E) construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where the roads are constructed and maintained, in accordance with best management practices, to assure that:

(i) flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired;

(ii) the reach of the navigable waters is not reduced; and

(iii) any adverse effect on the aquatic environment will be otherwise minimized.

(c) The goal of the permitting program for wetland activities in state regulated wetlands is to:

(1) promote a net gain in high quality isolated wetlands; and

(2) assure that compensatory mitigation will offset the loss of isolated wetlands allowed by the permitting program.

Sec. 2. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14 not later than February 1, 2004, to implement the definitions of Class I, II, and III wetlands in IC 13-11-2-25.8.

(b) Before the adoption of rules by the board under subsection (a), the department shall determine the class of a wetland in a manner consistent with the definitions of Class I, II, and III wetlands in IC 13-11-2-25.8."

Page 8, delete lines 3 through 4.

- 1 Page 8, line 5, delete "2." and insert **"3."**.
- 2 Page 8, line 5, delete "A site specific" and insert **"An individual"**.
- 3 Page 8, line 5, delete "may be" and insert **"is"**.
- 4 Page 8, line 6, delete "the discharge of fill material into" and insert
- 5 **"a wetland activity in"**.
- 6 Page 8, line 6, delete "Class II or".
- 7 Page 8, between lines 6 and 7, begin a new paragraph and insert:
- 8 **"(b) Except as provided in section 4(a) of this chapter, an**
- 9 **individual permit is required to authorize a wetland activity in a**
- 10 **Class II wetland."**.
- 11 Page 8, line 7, delete "(b)" and insert **"(c)"**.
- 12 Page 8, line 7, delete "establish:" and insert **"adopt rules under**
- 13 **IC 4-22-2 and IC 13-14 not later than June 1, 2004, to govern the**
- 14 **issuance of individual permits by the department under subsections**
- 15 **(a) and (b)."**.
- 16 Page 8, delete lines 8 through 18.
- 17 Page 8, line 19, delete "3." and insert **"4. (a) A general permit is**
- 18 **authorized for wetland activities with minimal impact in Class II**
- 19 **wetlands, including the activities authorized by the nationwide**
- 20 **permit program (as published in 67 Fed. Reg. 2077-2089 (2002)).**
- 21 **(b) A general permit is authorized for wetland activities in Class**
- 22 **I wetlands.**
- 23 **(c)".**
- 24 Page 8, line 20, delete "IC 13-14:" and insert **"IC 13-14 not later**
- 25 **than February 1, 2004, to establish and implement the general**
- 26 **permits authorized in subsections (a) and (b)."**.
- 27 Page 8, delete lines 21 through 26.
- 28 Page 8, line 27, delete "4." and insert **"5."**.
- 29 Page 8, line 27, delete "3" and insert **"4"**.
- 30 Page 8, line 28, delete "a" and insert **"an individual"**.
- 31 Page 8, line 29, delete "2(a)" and insert **"3"**.
- 32 Page 8, line 30, delete "the discharge of fill material into:" and insert
- 33 **"wetland activity:"**.
- 34 Page 8, line 31, delete "a Class II wetland".
- 35 Page 8, line 35, delete "a Class III wetland".
- 36 Page 8, delete lines 39 through 42.
- 37 Page 9, delete lines 1 through 4.
- 38 Page 9, line 5, delete "(3)" and insert **"(2)"**.

- 1 Page 9, line 5, delete "establish, as a" and insert **"establish"**.
- 2 Page 9, delete line 6.
- 3 Page 9, line 7, delete "the general permit by rule,".
- 4 Page 9, line 8, after "provided" insert **"as set forth in section 6 of**
- 5 **this chapter"**.
- 6 Page 9, line 9, delete "permits with an overall goal for the permit
- 7 program of" and insert **"permits; and"**.
- 8 Page 9, delete line 10.
- 9 Page 9, line 11, delete "(4)" and insert **"(3)"**.
- 10 Page 9, line 11, delete "to permits to fill Class".
- 11 Page 9, delete line 12.
- 12 Page 9, delete lines 15 through 23, begin a new paragraph and
- 13 insert:
- 14 **"(b) The rules adopted under section 4 of this chapter must**
- 15 **require, as a prerequisite to the applicability of the general permit**
- 16 **by rule to a specific wetland activity, that the person proposing the**
- 17 **discharge submit to the department a notice of intent to be covered**
- 18 **by the general permit by rule that:**
- 19 (1) identifies the wetlands to be impacted by the wetland
- 20 activity; and
- 21 (2) except as provided in subsection (c), provides a
- 22 compensatory mitigation plan as set forth in section 6 of this
- 23 chapter to reasonably offset the loss of wetlands allowed by
- 24 the general permit."
- 25 Page 9, line 24, delete "Rules under subsection (a)(3)" and insert
- 26 **"Under subsections (a) and (b), the rules adopted under section 4**
- 27 **of this chapter"**.
- 28 Page 9, between lines 25 and 26, begin a new paragraph and insert:
- 29 **"(d) For purposes of subsection (a)(1)(A):**
- 30 (1) a resolution of the executive of the county or municipality
- 31 in which the wetland is located; or
- 32 (2) a permit or other approval from a local government entity
- 33 having authority over the proposed use of the property on
- 34 which the wetland is located;
- 35 **that includes a specific finding that the wetland activity is**
- 36 **reasonably necessary or appropriate to achieve the intended use of**
- 37 **the property is considered conclusive evidence of that fact.**
- 38 **Sec. 6. (a) Except as otherwise specified in subsection (b) or**



IC 13-18-23, compensatory mitigation shall be provided in accordance with the following table:

Wetland Class	On-site Ratio	Off-site Ratio	Off-site Location	Replacement Class
Class I	1.5 to 1	1.5 to 1	Within the eight (8) digit U.S Geological Service hydrologic unit code	Class II or III
Class II	1.5 to 1 Non-forested	2 to 1 Non-forested	Within the eight (8) digit U.S. Geological Service hydrologic unit code	Class II or III
Class III	2 to 1 Non-forested	2.5 to 1 Non-forested	Within the eight (8) digit U.S. Geological Service hydrologic unit code	Class III

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity."

Page 9, line 26, delete "5." and insert "7."

Page 9, line 27, delete "program" and insert "programs".

Page 9, line 30, delete "fill" and insert "undertake wetland activities in".

Page 9, line 31, delete "section 3 of".

Page 9, line 32, delete "section 3 of".

Page 9, line 34, after "issue" insert "individual".

Page 9, line 36, delete "discharges of fill material to" and insert "wetland activities in".

Page 10, line 3, delete "section 2(a)" and insert "subsection (b)(1); and".

Page 10, delete line 4.

Page 10, line 6, delete "fill" and insert "undertake a wetland activity in".

Page 10, line 6, delete "(b)." and insert "(b)(2).".

Page 10, line 7, delete "6." and insert "8."

- 1 Page 10, line 8, delete "a" and insert "**an individual**".
- 2 Page 10, line 8, delete "2(a)" and insert "**3 or 7(b)(1)**".
- 3 Page 10, between lines 12 and 13, begin a new paragraph and insert:
- 4 "**(b) Except as provided in subsection (d), a general permit under**
- 5 **section 4 of this chapter is considered to have been issued to an**
- 6 **applicant on the thirty-first day after the department receives a**
- 7 **notice of intent of the permit if the department has not previously**
- 8 **authorized the wetland activity.**".
- 9 Page 10, line 13, delete "(b)" and insert "(c)".
- 10 Page 10, line 13, delete "(c)" and insert "(d)".
- 11 Page 10, line 13, delete "fill" and insert "**undertake a wetland**
- 12 **activity in**".
- 13 Page 10, line 14, after "wetland" insert "**under section 7(b)(2) of this**
- 14 **chapter**".
- 15 Page 10, line 14, after "issued" insert "**to an applicant**".
- 16 Page 10, line 16, delete "5(b)(2)" and insert "**7(b)(2)**".
- 17 Page 10, line 16, delete "a permit has not been issued".
- 18 Page 10, line 17, delete "by".
- 19 Page 10, line 17, delete "department." and insert "**department has**
- 20 **not previously authorized the wetland activity.**".
- 21 Page 10, line 18, delete "(c)" and insert "(d)".
- 22 Page 10, line 19, before "before" insert "**or (c)**".
- 23 Page 10, line 19, before "expires." insert "**or (c)**".
- 24 Page 10, line 20, delete "(d)" and insert "(e)".
- 25 Page 10, line 20, delete "(a)" and insert "**(a), (b),**".
- 26 Page 10, line 22, delete "7." and insert "**9.**".
- 27 Page 10, line 26, after "IC 4-22-2" insert "**and IC 13-14**".
- 28 Page 11, line 23, delete "8." and insert "**10.**".
- 29 Page 11, between lines 28 and 29, begin a new paragraph and insert:
- 30 "**Sec. 11. When land referred to in IC 13-11-2-74.5(a)(7) is no**
- 31 **longer subject to United States Department of Agriculture wetland**
- 32 **conservation rules:**
- 33 (1) **isolated wetlands located on the land are subject to**
- 34 **IC 13-18-22; and**
- 35 (2) **any past wetland activities in the isolated wetlands located**
- 36 **on the land become subject to IC 13-18-22, unless the wetland**
- 37 **activities were in compliance with United States Department of**
- 38 **Agriculture wetland conservation rules.**".

- 1 Page 11, line 32, delete "Bank" and insert "**Banking**".
- 2 Page 11, line 33, delete "the Indiana" and insert "**a bank of**
- 3 **voluntarily created wetlands that may be used as compensatory**
- 4 **mitigation to offset losses of wetlands occurring as a result of**
- 5 **wetland activities.**".
- 6 Page 11, delete line 34.
- 7 Page 11, line 35, delete "bank" and insert "**Indiana wetlands**
- 8 **mitigation banking**".
- 9 Page 11, line 36, delete "restoration, creation, or enlargement" and
- 10 insert "**restoration or creation**".
- 11 Page 11, line 36, after "of " insert "**voluntarily created**".
- 12 Page 11, line 37, after "as" insert "**compensatory**".
- 13 Page 11, line 37, delete "credits" and insert "**banks**".
- 14 Page 11, line 37, delete "regulated".
- 15 Page 11, line 38, delete "development projects." and insert "**wetland**
- 16 **activities.**".
- 17 Page 11, line 39, delete "Mitigation credits" and insert "**Credits**".
- 18 Page 11, line 39, delete "owners of wetlands" and insert "**banks**".
- 19 Page 11, line 40, delete "in the bank".
- 20 Page 11, line 41, delete "projects at any location in Indiana" and
- 21 insert "**wetland activities in:**".
- 22 Page 11, delete line 42.
- 23 Page 12, line 4, delete "mitigation".
- 24 Page 12, line 5, delete "project".
- 25 Page 12, delete line 6.
- 26 Page 12, line 7, after "wetland" insert "**activity**".
- 27 Page 12, line 7, after "the" insert "**conditions established in**
- 28 **IC 13-18-22-6, except for the**".
- 29 Page 12, line 8, delete "credits may be applied regardless of the" and
- 30 insert "**ratio for a fully certified bank shall be one to one (1:1).**".
- 31 Page 12, delete lines 9 through 10.
- 32 Page 12, line 11, delete "ratio of mitigation credits to the acreage of
- 33 state" and insert "**location may be outside of the eight (8) digit U.S.**
- 34 **Geological Service hydrologic unit code for the wetland activity if**
- 35 **the department determines that greater ecological or water quality**
- 36 **benefits can be derived.**".
- 37 Page 12, delete lines 12 through 27.
- 38 Page 12, line 28, delete "(e)" and insert "(c)".

- 1 Page 12, line 30, delete "(f)" and insert "**(d)**".
- 2 Page 12, line 31, delete "to facilitate:" and insert "**to:**".
- 3 Page 12, line 32, delete "the administration of the bank;" and insert
- 4 "**implement this chapter;**".
- 5 Page 12, line 33, after "(2)" insert "**facilitate**".
- 6 Page 12, line 33, delete "mitigation".
- 7 Page 12, line 33, delete "for wetlands" and insert "**in**".
- 8 Page 12, line 34, delete "with the bank;" and insert "**banks;**".
- 9 Page 12, line 38, delete "wetlands" and insert "**bank**".
- 10 Page 12, line 38, delete "with the bank" and insert "**under subsection**
- 11 **(b)**".
- 12 Page 12, line 39, delete "mitigation".
- 13 Page 12, line 39, delete "based on the wetlands" and insert "**from the**
- 14 **bank**".
- 15 Page 12, line 40, delete "with the" and insert "**as a**".
- 16 Page 12, line 42, delete "volitional" and insert "**voluntarily created**".
- 17 Page 13, line 2, delete "volitional" and insert "**voluntarily created**".
- 18 Page 13, line 2, delete "restored, created, or enlarged" and insert
- 19 "**restored or created**".
- 20 Page 13, line 4, delete "wetland with the".
- 21 Page 13, line 5, delete "wetland" and insert "**bank**".
- 22 Page 13, line 6, delete "voluntary wetland" and insert "**voluntarily**
- 23 **created wetlands in the bank**".
- 24 Page 13, line 8, delete "restoration, creation, or enlargement" and
- 25 insert "**restoration or creation**".
- 26 Page 13, line 18, delete "a one (1) time" and insert "**an initial**".
- 27 Page 13, line 18, after "of" delete "the" and insert "**five hundred**
- 28 **dollars (\$500) per wetland.**".
- 29 Page 13, delete lines 19 through 21.
- 30 Page 13, line 22, after "of" insert "**banks.**".
- 31 Page 13, delete line 23.
- 32 Page 13, line 24, delete "wetland".
- 33 Page 13, line 25, delete "for the".
- 34 Page 13, line 26, delete "wetland" and insert "**wetlands in the bank**".
- 35 Page 13, line 27, delete "its" and insert "**the**".
- 36 Page 13, line 30, delete "wetland in the".
- 37 Page 13, line 31, delete "for".
- 38 Page 13, line 32, delete "the wetland".

- 1 Page 13, line 35, delete "wetland" and insert **"bank"**.
- 2 Page 13, line 36, delete "wetland" and insert **"bank"**.
- 3 Page 13, line 38, delete "registered in the bank." and insert
- 4 **"registered."**.
- 5 Page 13, line 40, delete "wetland with the".
- 6 Page 13, line 40, delete "restoration, creation, or" and insert
- 7 **"restoration or creation"**.
- 8 Page 13, line 41, delete "enlargement".
- 9 Page 13, line 42, delete "with the" and insert **"as a"**.
- 10 Page 14, line 1, delete "wetland from".
- 11 Page 14, line 2, delete "the".
- 12 Page 14, line 2, after "bank" insert **"from the Indiana wetlands**
- 13 **mitigation banking program"**.
- 14 Page 14, line 2, delete "mitigation" and insert **"it sells"**.
- 15 Page 14, line 2, delete "are sold".
- 16 Page 14, line 3, delete "chapter on the basis of the registered
- 17 wetland."and insert **"chapter."**.
- 18 Page 14, between lines 3 and 4, begin a new paragraph and insert:
- 19 **"(h) The owner of a registered wetland must submit to the**
- 20 **department a payment of two hundred fifty dollars (\$250) per year**
- 21 **to renew the owner's registration.**
- 22 **(i) Funds derived from the registration and renewal fees shall be**
- 23 **used to finance the oversight of the Indiana wetlands mitigation**
- 24 **banking program."**.
- 25 Page 14, line 4, delete "wetlands mitigation".
- 26 Page 14, line 6, delete "an owner of wetlands acreage registered in"
- 27 and insert **"a registered"**.
- 28 Page 14, line 7, delete "the".
- 29 Page 14, line 8, delete "projects involving a discharge of fill" and
- 30 insert **"wetland activities in:"**.
- 31 Page 14, delete line 9.
- 32 Page 14, delete lines 15 through 28.
- 33 Page 14, line 29, delete "(c)" and insert **"(b)"**.
- 34 Page 14, line 29, delete "registered".
- 35 Page 14, line 29, after "wetland" insert **"in a registered bank"**.
- 36 Page 14, line 29, delete "mitigation".
- 37 Page 14, line 32, delete "registered".
- 38 Page 14, line 33, delete "(d)" and insert **"(c)"**.

- 1 Page 14, line 34, delete "the registered wetland:" and insert "**a**
- 2 **wetland registered in a bank:**".
- 3 Page 14, line 35, delete "registered".
- 4 Page 14, line 38, delete "registered".
- 5 Page 14, line 40, delete "(e)" and insert "**(d)**".
- 6 Page 14, line 40, delete "registered".
- 7 Page 14, line 42, delete "registered".
- 8 Page 15, line 2, delete "(f)" and insert "**(e)**".
- 9 Page 15, line 4, delete "(g)" and insert "**(f)**".
- 10 Page 15, line 4, delete "registered".
- 11 Page 15, line 5, delete "registered".
- 12 Page 15, line 9, delete "mitigation".
- 13 Page 15, line 9, delete "registered".
- 14 Page 15, line 15, delete "(h)" and insert "**(g)**".
- 15 Page 15, line 15, delete "mitigation".
- 16 Page 15, line 17, delete "wetlands development project" and insert
- 17 "**wetland activity**".
- 18 Page 15, line 18, delete "registered" and insert "**bank**".
- 19 Page 15, line 19, delete "wetland".
- 20 Page 15, line 19, delete "mitigation".
- 21 Page 15, line 21, delete "bank" and insert "**bank.**".
- 22 Page 15, delete line 22.
- 23 Page 15, line 23, delete "(i)" and insert "**(h)**".
- 24 Page 15, line 23, delete "registered wetland" and insert "**bank**".
- 25 Page 15, line 24, delete "year" and insert "**year:**
- 26 **(1)**".
- 27 Page 15, line 26, delete "year." and insert "**year;**".
- 28 Page 15, between lines 26 and 27, begin a new line block indented
- 29 and insert:
- 30 "**(2) the two hundred fifty dollar (\$250) renewal fee; and**
- 31 **(3) a report required under section 14 of this chapter.**".
- 32 Page 15, line 27, delete "(j)" and insert "**(i)**".
- 33 Page 15, line 27, delete "wetland".
- 34 Page 15, line 28, delete "registered in the".
- 35 Page 15, line 29, delete "wetland;" and insert "**bank;**".
- 36 Page 15, line 30, delete "sold on the" and insert "**sold;**".
- 37 Page 15, delete line 31.
- 38 Page 15, line 32, delete "sale" and insert "**sale;**".

- 1 Page 15, delete line 33.
- 2 Page 15, line 34, delete "mitigation".
- 3 Page 15, line 37, delete "mitigation".
- 4 Page 15, line 37, delete "sold on the basis of the registered wetland."
- 5 and insert **"sold."**.
- 6 Page 15, between lines 37 and 38, begin a new paragraph and insert:
- 7 **"Sec. 6. (a) The department:**
- 8 **(1) shall consider the criteria set forth in subsection (b) in**
- 9 **evaluating and approving a bank; and**
- 10 **(2) may consider failure to meet any of the criteria in**
- 11 **subsection (b) as grounds to deny registration of the bank.**
- 12 **(b) The bank must:**
- 13 **(1) be owned or under the full control of the person seeking to**
- 14 **register the bank;**
- 15 **(2) not contain prior recorded easements that would adversely**
- 16 **affect the maintenance of the bank in perpetuity;**
- 17 **(3) contain wetlands with a majority of drained or**
- 18 **hydrologically modified hydric soils, recognizing that**
- 19 **restoration of former wetlands is a preferred form of**
- 20 **mitigation;**
- 21 **(4) not include conversion of moderate or high quality uplands**
- 22 **for the creation of wetlands;**
- 23 **(5) have no high quality wetlands or uplands that would be**
- 24 **adversely affected by the construction or restoration work;**
- 25 **(6) following construction, be surrounded by an upland buffer**
- 26 **that:**
- 27 **(A) is at least fifty (50) feet wide on all borders except where**
- 28 **the mitigation site meets:**
- 29 **(i) a water body;**
- 30 **(ii) another wetland; or**
- 31 **(iii) a natural area; and**
- 32 **(B) is vegetated with species native to that region;**
- 33 **(7) be situated in a manner that adequate self-sustaining**
- 34 **hydrology can be ensured;**
- 35 **(8) contain no known hazardous waste or solid waste, a survey**
- 36 **of which, included as part of a Phase I assessment, must be**
- 37 **conducted by qualified personnel (ASTM-1528);**
- 38 **(9) have adjacent land uses and zoning designations compatible**

with the goals of the Indiana wetlands mitigation banking program;

(10) following construction, support wetland-dependent species assemblages similar to those in natural areas in abundance, complexity, and diversity, including macroinvertebrates, reptiles, amphibians, mammals, and bird species;

(11) following construction, support wetland plant communities similar to those in natural areas in cover, complexity, and diversity;

(12) following construction, have all man-made grades steeper than five percent (5%) located outside of the buffer area, except for:

(A) grades for impoundment structures; and

(B) other grades if the sponsor of the bank can show that steeper grades are indicative of the natural areas the wetland mitigation bank is designed to emulate;

(13) include at least twenty-five (25) acres of one (1) or more of the following:

(A) Wetland restoration.

(B) Wetland creation.

(C) Wetland enhancement; and

(14) in the development of the bank site, not adversely affect federally or state listed threatened or endangered species or their critical habitat areas.

**Sec. 7. Storm water may be routed into the wetlands in a bank if the storm water will not have a negative impact on the wetlands.**

**Sec. 8. (a) A bank may be publicly or privately owned, and may be incorporated as for-profit or nonprofit. If the bank is incorporated, it must be incorporated in the state. Publicly owned refers to ownership by any municipal, county, regional, state, or federal governmental entity.**

**(b) All land, including associated upland, that is part of a bank shall be protected in perpetuity from future development by a permanent conservation easement. The conservation easement must set forth the long term uses planned for the site. Following registration of the bank, the permanent conservation easement must be recorded with the appropriate county recorder's office and attached to the abstract of title. A certified copy of the recording**



1 must be submitted to the department before the sale of credits.

2 Sec. 9. The department shall fully certify credits from a bank  
3 when the bank conforms to the following performance standards:

4 (1) Wetlands created or restored for credit must meet the  
5 criteria outlined in the Corps of Engineers' Wetland  
6 Delineation Manual (Technical Report Y-87-1).

7 (2) At least eighty percent (80%) of the planted or seeded  
8 species must be alive and present following the fifth full  
9 growing season.

10 (3) The wetland plant communities must be free of the invasive  
11 non-native species purple loosestrife (*Lythrum salicaria*) and  
12 common reed (*Phragmites australis*).

13 (4) All attempts must be made to eliminate all non-native  
14 invasive species, including reed canary grass (*Phalaris*  
15 *arundinacea*) and Eurasian water-milfoil (*Myriophyllum*  
16 *spicatum*), from all areas of the bank including the  
17 preservation areas, upland buffers, and upland inclusions.

18 (5) The site must be surveyed annually for non-native species  
19 presence.

20 (6) The total of native perennial species within each wetland  
21 plant community must constitute at least:

22 (A) fifty percent (50%) cover within two (2) years; and

23 (B) eighty percent (80%) cover within five (5) years;

24 after planting or seeding.

25 Sec. 10. The department may develop on a case-by-case basis  
26 alternative standards to the standards stated in section 9(6) of this  
27 chapter for specific wetland habitats, such as standards based on  
28 the diversity of wetland species.

29 Sec. 11. If, at the end of five (5) years of monitoring, any of the  
30 standards stated in section 9 of this chapter are not met, the person  
31 responsible for the bank shall submit a plan to the department that  
32 outlines all corrective measures to be taken based on the ecological  
33 conditions of the site. Management activities shall continue until all  
34 standards are met.

35 Sec. 12. If non-native species are present, the department may  
36 extend the monitoring period to monitor the effectiveness of the  
37 control measures and gauge the rate of infestation. The department  
38 may allow the final release of credits if:

- (1) the infestation is eliminated; or**
- (2) sufficient funding is provided to control the non-native and nuisance species.**

**Sec. 13. (a) The person responsible for the bank must provide:**

**(1) short-term financial assurances as follows:**

**(A) The person responsible for the bank must deposit in an escrow account adequate funds to ensure the construction, monitoring, management, and maintenance of the bank.**

**(B) The bank owner:**

**(i) must maintain an escrow account until all credits have been fully certified and the department determines that the bank is self-sustaining; or**

**(ii) provide a performance bond issued by a corporate surety or an irrevocable letter of credit issued by a financial institution for work to be performed, with the department listed as the beneficiary of the instrument; and**

**(2) long-term financial assurances as follows:**

**(A) The person responsible for the bank must:**

**(i) create and fund a long-term management trust fund that will generate annual returns sufficient for annual administration and maintenance of the site into perpetuity; and**

**(ii) submit an estimated yearly maintenance cost for perpetual maintenance of the site.**

**(B) After construction is completed and until the bank is released from monitoring, the person responsible for the bank must submit an annual summary of management related expenses.**

**(C) Before the final credit release, the person responsible for the bank must:**

**(i) submit a copy of the trust document to the department; and**

**(ii) demonstrate to the department that sufficient principal has been invested to generate enough net interest (accounting for items such as tax, inflation, and fees) to fund the annual maintenance and administration costs.**

**(b) All types of financial assurances must include funds to cover any and all liens on the property in addition to other construction**

1 costs.

2 (c) The department may require an independent audit of the  
3 trust under subsection (a)(2)(A)(i) at any time to ensure proper  
4 management of the property and the trust fund. The audit shall be  
5 conducted by a certified public accountant. Misuse of the trust  
6 fund may result in forfeiture of the trust or criminal prosecution.

7 **Sec. 14. (a) The person responsible for the bank shall:**

8 (1) conduct monitoring for a minimum of five (5) years from  
9 the date site construction and planting have been completed;  
10 and

11 (2) continue monitoring until all performance standards have  
12 been met.

13 (b) The department may require monitoring for period longer  
14 than the period stated in subsection (a) if more time is needed to  
15 ensure a stable condition or if corrective action is taken.  
16 Management must include all actions necessary to reconcile the  
17 bank's current conditions with the performance standards. The  
18 person responsible for the bank:

19 (1) is responsible for monitoring, management, and reporting  
20 to the department; and

21 (2) may subcontract the responsibilities under subdivision (1)  
22 with public or private organizations.

23 (c) The person responsible for the bank:

24 (1) must provide the monitoring results and financial status of  
25 the bank to the department on an annual basis during the  
26 monitoring period; and

27 (2) may cease providing monitoring reports if the department:

28 (A) determines that the performance standards have been  
29 met; and

30 (B) fully certifies the bank.

31 (d) The person responsible for the bank must notify the  
32 department of credit sales and credit transactions annually until all  
33 credits have been sold.

34 (e) The bank must be dedicated in perpetuity to maintaining the  
35 wetland functions and values to the exclusion of other conflicting  
36 uses. The person responsible for the bank must submit a final  
37 long-term management plan to the department. The department  
38 must approve the plan before the department may declare the

- 1        **bank successful and finally release credits. This plan must include**
- 2        **a list of proposed uses for the bank. The uses must be compatible**
- 3        **with the conservation easement. Land use must be compatible with**
- 4        **the bank's goals and the benefits generated by the bank."**
- 5        Renumber all SECTIONS consecutively.  
          (Reference is to SB 491 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 10, Nays 0.

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**Gard**

**Chairperson**